

PC  
6711-6712

34/11962

IN THE PRIVY COUNCIL

No. 1 of 1962

UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
LEGAL STUDIES  
30 MAR 1963  
25 RUSSELL SQUARE  
LONDON, W.C.1.

O N A P P E A L  
FROM THE SUPREME COURT OF THE  
STATE OF SINGAPORE  
ISLAND OF SINGAPORE

68276

B E T W E E N :

10 LIM CHIN AIK alias CHIN YAP alias  
LIM HIN LEONG alias TWA KO AIK alias  
LIM CHIN I alias LIM KIM YAP alias  
LAM KAM IEK Appellant

- and -

THE QUEEN Respondent

CASE FOR THE RESPONDENT

1. This is an appeal by special leave of the Record  
Judicial Committee given on 24th October, 1961, P.15  
from an order of the High Court of State of P.14  
Singapore, dated 24th February 1960, which  
dismissed an appeal from a decision of the  
Magistrates Court, Singapore (P.T.K. Lau Esq.)  
20 dated 12th September, 1959, whereby the Appellant P.8  
was convicted of remaining in the State of  
Singapore whilst prohibited from doing so by an  
order made under the Immigration Ordinance, and P.17  
was fined \$1250 or three months imprisonment in  
default of payment.

2. The questions raised by this appeal are  
whether the Appellant should have been served  
personally with the prohibition order, or  
30 alternatively whether the prosecution had failed  
to prove mens rea on the part of the Appellant.

3. The relevant statutory provisions are  
contained in the Immigration Ordinance (Cap.102),  
as amended by Ordinance No. 22 of 1959 as follows:

6. (2) It shall not be lawful for any person  
other than a citizen of Singapore to enter  
the Colony from the Federation or having  
entered the Colony from the Federation to  
remain in the Colony if

.....

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(b) such person has been prohibited by order made under s.9 of this Ordinance from entering the Colony.

(3) Any person who contravenes the provisions of sub-section (1) or (2) of this section shall be guilty of an offence against this Ordinance.

9. (1) The Minister may by order

(a) Where he deems it expedient to do so in the interests of public security or by reason of any economic industrial social educational or other conditions in Malaya (i) prohibit either for a stated period or permanently the entry or re-entry into the Colony of any person or class of persons..... 10

Provided always that no order made in the interests of public security shall apply to any person outside Malaya at the time when such order was made and who was in possession of a valid re-entry permit lawfully issued to him. 20

57. Any person guilty of an offence against this Ordinance for which no special penalty is provided shall be liable on conviction to imprisonment for a term not exceeding six months or to a fine not exceeding two thousand dollars or to both such imprisonment and fine.

4. The Appellant was tried on two charges:

(a) that he, not being statutorily exempted, did on or about 17th May 1959 enter the State of Singapore from a place outside Malaya without a valid Entry Permit, contrary to section 6(1) of the Immigration Ordinance, and 30

(b) that he, having entered Singapore from the Federation of Malaya in May, 1959, did remain therein whilst prohibited by an order made by the Minister under section 9 of the Immigration Ordinance, prohibiting him from entering Singapore, contrary to section 6(2) of the Ordinance. 40

p.20 1.24 The first charge was not proceeded with, and the learned Magistrate acquitted the Appellant thereof at the end of the hearing.

5. The second charge was heard before P.T.K. Lau, the Magistrate for the 7th Magistrates' Court on 17th August 1959, and the evidence called on behalf of the Respondent included the following:

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- (a) Toh Keng Tak, Inspector of the Narcotics Branch said that he arrested the Appellant on 29th June 1959 at 46 Kandahar Street, Singapore, having previously received authority to detain him. p.4 1.16
- 10 (b) Lee Siew Kwang, Assistant Deputy Controller of Immigration, said that in the course of his duties he had received an application on behalf of the Appellant for re-entry into Singapore. This application had been rejected and the rejection notified to the sponsor on 2nd April 1959. On 28th May 1959 he had received the prohibition order from the Ministry of Labour and Welfare, dated the same day, prohibiting the Appellant's entry into Singapore on the ground of the social conditions in Malaya, and he identified the Minister's signature thereon. p.4 1.32
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- (c) Tau Hai Tua, Deputy Assistant Controller of Immigration said that he had taken a statement from the Appellant on 29th June 1959 after his arrest. The Appellant had not been in Singapore, as far as the witness knew, before 17th May 1959. The Appellant had had no permit or document to enter Singapore, and had no right of entry into Singapore. In his statement the Appellant had said that he was born in China and had come to Singapore at the age of 23: he had three wives and 11 children who lived together at 46 Kandahar Street, the premises of his shipping business, which now had only five sailing vessels: in 1952 he had been suspected of smuggling, and finally on 8th March 1954 he was expelled from the Colony, and travelled to China, Hong Kong and Siam, living on remittances from his wives: he crossed into Malaya in March 1957 and obtained an identity card in the name of Lim Hin Leong but a few days after returned to Siam: on 15th January 1959 his wives succeeded in having his expulsion order from the Colony rescinded and thereafter they applied for an entry permit into Singapore, to which there was no result for many months: because he was a wanted man, he had had to adopt two aliases: as his wives could not manage his business, he had had no alternative but to return to Singapore from Thailand: he finally came to p.5 1.13 p.19
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stay in Johore on 17th May 1959 and used to cross over every day to Singapore: but about ten days before his arrest he came to stay in Kandahar Street permanently: he did not have a permit to enter Malaya or Singapore, and his entry permit application was still pending.

p.6 l.24 6. It was submitted on behalf of the Appellant that there was no case to answer. On the rejection  
p.7 l.24 of this submission, no evidence was called on his behalf. 10

p.7 l.26 7. The learned Magistrate found the Appellant  
p.8 guilty of the charge under section 6(2) of the Immigration Ordinance and on 12th September 1959 gave his reasons for so doing.

In his judgment the learned Magistrate found that the Appellant had left Singapore in 1954 and that in May 1959 he was living in Johore, visiting Singapore daily: more than ten days before 29th June 1959 he had come to live permanently in Singapore at the place where he was arrested: the prohibition order had been made on 28th May, and the Appellant had admitted that he did not have a permit to stay in Singapore or Malaya. Several reasons had been submitted why there was no case to answer on the charge: the first submission was that no period of prohibition was stated in the order: section 9 provided that an order could be made permanently or for a stated period: in the absence of a period stated, it was clear that the prohibition was permanent, and this did not need to be stated. The second objection, that the order should have been gazetted, was not borne out by the words of section 9, which required gazetting only in the case of an order relating to a class of persons. The third objection was that the order was to take effect on the day it was made: the answer to this was that the Appellant had entered when he was already prohibited. Finally it had been submitted that the order should have been personally served on the Appellant: the Ordinance was silent upon this matter, and the learned Magistrate concluded that, once the order was made, it took effect, whether or not the Appellant knew of its existence. 20 30 40

p.9 l.26 The Appellant was sentenced to a fine of \$1250, with three month imprisonment in default of payment.

p.10 8. The Appellant appealed to the High Court of  
p.14 the State of Singapore. Where on 24th February 1960, his appeal was dismissed by the Chief Justice without any reasons being given. On 24th October 50

1961 the Appellant was granted special leave to appeal by the Judicial Committee.

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10 9. The Respondent respectfully submits that the Appellant was properly convicted. It is submitted that the first three submissions made on his behalf to the learned Magistrate were properly rejected for the reasons given by the learned Magistrate and that the provisions of the Immigration Ordinance were too clear to allow of any other course upon those objections. It is further submitted that, on the language of the Immigration Ordinance, it is not open to the Appellant to suggest that it is necessary for a prohibition order to be served upon the person named therein before it can become effective. It is clear that a contrast is drawn between an order relating to a named individual and one relating to a class of persons: in the latter case the order requires gazetting before coming into force, but the absence of such a provision in the case of a named individual should mean that no publication either publicly or to the named individual is required.

30 10. It is respectfully submitted that it is not necessary for the prosecution to prove mens rea in the sense of a guilty mind in the case of any offence under section 6 of the Ordinance. The words of the statute are clear and impose an absolute prohibition: they do not require and therefore do not permit of any addition or implication of words importing the necessity of proving a guilty mind on the part of the accused. It is submitted that the correct test of interpretation of a statute such as this is that described in R. v St. Margarets Trust (1958) 1 W.L.R. 522, and that there is no presumption that mens rea in the sense of a guilty mind is an essential ingredient in the offence with which the Appellant was charged. This offence is one of those where the doing of the act prohibited alone is sufficient to import mens rea. It is further submitted that some offences in relation to the control of aliens and immigration are to be expected to be expressed in absolute terms, having regard to the national interests involved. It is submitted that the offence with which the Appellant was charged was such an offence, and that in any event it would tend to nullify the effect of the Ordinance, if it were necessary for the prosecution to prove that the accused had knowledge of the making of the prohibition order. This would particularly apply if, as in the present case, the accused was resident outside Singapore when the order was made.

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11. The Respondent respectfully submits that this appeal should be dismissed and the Appellant's conviction and sentence affirmed for the following, amongst other

R E A S O N S

1. BECAUSE there was sufficient evidence before the learned Magistrate upon which the Appellant could have been found guilty
2. BECAUSE it was not necessary for the prohibition order to be served upon the Appellant.
3. BECAUSE it is not necessary to prove a guilty mind to support the charge against the Appellant.
4. BECAUSE the Appellant has not shown that he was acting innocently and in good faith.
5. BECAUSE the Appellant was properly convicted.

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MERVYN HEALD

No. 1 of 1962  
IN THE PRIVY COUNCIL  
ON APPEAL FROM  
THE SUPREME COURT OF THE  
STATE OF SINGAPORE  
ISLAND OF SINGAPORE

BETWEEN:

LIM CHIN AIK Appellant

- and -

THE QUEEN Respondent

CASE FOR THE RESPONDENT

CHARLES RUSSELL & Co.,  
37 Norfolk Street,  
Strand,  
London, W.C.2.